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Ari Redbord • 2nd
Head of Legal and Government Affairs at TRM Labs
1w •

Excellent in-depth reporting by [Zachary Small](#) for [The New York Times](#) on today's verdict in federal court awarding [Hermès](#) \$133,000 in total damages against the artist behind NFT project "MetaBirkins." Some super interesting and potentially far reaching legal issues.

As Mr. Small explains, "Perturbed when an artist made a digital version of its coveted Birkin handbag with a reproduction of a mature fetus inside it, the luxury fashion brand Hermès watched in shock as other iterations popped up online. A Birkin with mammoth tusks affixed to it. One sporting the Grinch's shaggy green fur. Others stamped with van Gogh's "Starry Night" or populated by smiley emojis."

Hermès swiftly sued the artist, Mason Rothschild, over the NFT project he called "MetaBirkins," arguing that the company's trademark was being diluted and that potential consumers might be fooled into buying the unaffiliated virtual goods.

The case's ramifications extended far beyond Hermès. In some of the first litigation to scrutinize the nature of digital assets sold on the blockchain, up for debate was whether NFTs, or nonfungible tokens, are strictly commodities or art shielded by the First Amendment... "

"What we see in the Hermès case is how emerging technologies and historic, age-old brands collide," said [Ari Redbord](#), head of legal and government affairs at [TRM Labs](#), a blockchain analytics firm.

Full reporting here: https://lnkd.in/dCc_ud4w



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**Jane Kramer** (She/Her) • 3rd+
Creative Solutions Director - UBS Wealth Management USA

6d ...

Actually Hermes had no issue with Baby Birkin. Only MetaBirkins. It's the difference between the two projects that created this verdict.

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**Ben Duggan** • 3rd+
Co-Founder and Director of Investor Relations at Berkley Capital Management

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Should have gone with beerkins

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**Jason Scharfman** • 2nd
Crypto Compliance, Operations and Risk | Anti Money Laundering (AML) | Blockchain | Fraud Investigations | Due Diligence | FinTech | Regulatory Compliance | Hedge Fund Risk | Operational Risk | Alternative Investments

1w ...

So where's the line? If the artist would have given it a different name, would that have solved the problem? Probably not. But if it was a different name and the style of the bag changed just enough - sound like a slippery legal slope. More litigation likely to come!

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**Jane Kramer** (She/Her) • 3rd+
Creative Solutions Director - UBS Wealth Management USA

6d ...

It was the intent to mislead and confuse by violating and leveraging multiple TMs and IP to profit

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**Jason Scharfman** • 2nd
Crypto Compliance, Operations and Risk | Anti Money Laundering (AML) | Blockchain | Fraud Investigations | Due Diligence | FinTech | Regulatory Compliance | Hedge Fund Risk | Operational Risk | Alternative Investments

6d ...

Jane Kramer good points. I think part of the problem was the artist tried to imitate a traditional real world brand. There are many Bored Ape Yacht Club NFT ape clones that are clearly derivative of the original BAYC that are allowed to exist without issue, but then BAYC has its own IP questions. It will be interesting to see how the courts continue to suss out these finer points and emerging issues.

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**Jane Kramer** (She/Her) • 3rd+
Creative Solutions Director - UBS Wealth Management USA

6d ...

Jason Scharfman it seems his goal was to try and imitate the customer and brand journey of a real world product in a digital world. Which is a cool idea. Only instead of being purely artistic about it he created an entire business and marketing plan (road map with attached utility) along with it, didn't disclaim the relationship to Hermes nor correct major media outlets published confusion that this was initiated by Hermes. He leveraged their trademarks to create hype and to profit. Then when busted, ignored a cease and desist and tried to hide under the 1st amendment. Which, IMO, sullies it for other people who are legally pursuing the outer boundaries of art in the digital world. He got greedy. It's sad. Now he is trying to use the entire premise of artistic freedom to play victim. Nobody questioned his actual artwork nor if he is or isn't an artist. It was how he used this art that waived his rights. Intent to mislead.

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**Jason Scharfman** • 2nd
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6d ...

Jane Kramer more great analysis! I agree the for profit thing is a bit tricky, but it's sometime difficult to distinguish between a "greedy" artist and one trying to simply profit "legitimate" from their work. For example there is the Ryder Ripples case where he copied CryptoPunk #3100, made some minor changes and then sold it for over 2 ETH. He then minted Larva Labs DMCA notice as an NFT and sold that too (<https://nftclub.com/can-nfts-be-copied/>). Is the whole thing just performance art? Social commentary? Greed playing into the NFT trend? Legally there are a whole host of other issues but increasing case law like in this Hermes case will help clarify these issues. Will be even trickier as the technology evolves and the courts struggle to keep up.

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Jane Kramer (She/Her) • 3rd+
Creative Solutions Director - UBS Wealth Management USA

6d ...

Jason Scharfman also the comparison to Warhol and Campbell's soup is apples to oranges. Campbell's said it was ok for starters. Plus Warhol took credit from day one without confusion. And sorry dude you aren't Warhol. Lol.

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Angela Ang • 3rd+
Public Policy @ TRM Labs | Blockchain Intelligence & Crypto Compliance |
Former MAS Regulator | INSEAD MBA | Fintech65 Leader

1w ...

Thanks for sharing Ari, certainly a landmark case.

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